No. 138, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

APPLICATION OF THE STATE OF SOUTH CAROLINA FOR LEAVE TO FILE SUR-REPLY IN SUPPORT OF EXCEPTIONS TO FIRST INTERIM REPORT OF THE SPECIAL MASTER IN EXCESS OF WORD LIMITATION

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Pursuant to Rules 22 and 33.1(d) of the Rules of this Court, plaintiff the State of South Carolina respectfully moves for leave to file a sur-reply of 9,000 words, rather than 7,500 words. This modest increase is necessary and supported by good cause, so that South Carolina may respond adequately to three lengthy briefs filed by proposed intervenors, as well as a fourth brief in their support filed by defendant the State of North Carolina.

On January 9, 2009, this Court ordered received and filed the First Interim Report of the Special Master, which recommends that three proposed intervenors (the City of Charlotte, North Carolina, the Catawba River Water Supply Project, and Duke Energy Carolinas, LLC) be admitted as parties to this equitable

apportionment action. In the same order, the Court granted South Carolina's motion for leave to file exceptions to that Report and provided for a brief on exceptions, replies thereto, and a sur-reply.

On February 9, 2009, South Carolina filed its brief on exceptions totaling 14,823 words. On February 23, 2009, the United States filed an *amicus* brief supporting South Carolina totaling 5,866 words. On March 9, 2009, the three proposed intervenors each filed separate briefs totaling 30,017 words. North Carolina filed a brief totaling 5,666 words supporting their interventions, for a total of 35,683 words.

South Carolina's sur-reply is due by 2:00 p.m. on March 23, 2009. Although Supreme Court Rule 33.1 does not specifically address word limits for sur-replies on exceptions in original actions, we understand that South Carolina's sur-reply is limited to 7,500 words, which is the analogous word limit for reply briefs on the merits. *See* Sup. Ct. R. 33.1(g)(vii).

The 1,500-word increase requested by South Carolina, to 9,000 words from 7,500 words, is modest and justified by good cause. The total number of words in the three proposed intervenors' briefs is double the 15,000 words ordinarily permitted by Supreme Court Rule 33.1 for a single brief from a respondent on the merits or in reply to exceptions in an original action. *See* Sup. Ct. R. 33.1(g)(vi), (viii). The addition of North Carolina's brief further increases that disparity. Each of the three proposed intervenors' briefs to which South Carolina must respond takes different positions and reflects different interests. Allowing this slight

expansion of South Carolina's sur-reply will assist the Court, by permitting South Carolina to brief certain matters that might otherwise be raised only in questions at oral argument, should one be scheduled

Accordingly, plaintiff the State of South Carolina respectfully moves for leave to file a sur-reply in support of its exceptions to the First Interim Report of the Special Master in excess of the 7,500 word limitation, but not exceeding 9,000 words.

Respectfully submitted,

DAVID C. FREDERICK
SCOTT H. ANGSTREICH
SCOTT K. ATTAWAY
W. DAVID SARRATT
MICHAEL K. GOTTLIEB
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
Special Counsel to the
State of South Carolina

HENRY DARGAN McMASTER
Attorney General
JOHN W. McINTOSH
Chief Deputy Attorney
General
ROBERT D. COOK
Assistant Deputy Attorney
General
Counsel of Record
T. PARKIN HUNTER
Assistant Attorney General
LEIGH CHILDS CANTEY
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3970
Counsel for the
State of South Carolina

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